

STATE OF DELAWARE
DEFERRED COMPENSATION PLAN

As amended and restated, effective February 28, 2007

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INTRODUCTION

The State of Delaware established a Deferred Compensation Plan for the benefit of its employees, effective as of July 1, 1971. The Plan is intended to satisfy the requirements of Section 457(b) of the Internal Revenue Code, as amended. Benefits are funded through the State of Delaware Deferred Compensation Plan Trust, effective as of October 1, 1999.

The Deferred Compensation Plan (the “Plan”) has been amended from time to time, and was previously amended and restated, effective as of January 1, 2002 (or as otherwise stated in this document), to conform to the requirements of Section 457(b) of the Code, as amended by the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”) and the regulations issued thereunder and on May 23, 2006, or as otherwise stated herein, to make provision for qualified domestic relations orders, among other reasons. The Plan is now hereby being amended and restated by the Deferred Compensation Council under the authority of Title 29, Chapter 60A, Section 6053 of the Delaware Code, effective as of February 28, 2007 or as otherwise stated herein in order to amend the definition of “unforeseeable emergency” as permitted by Section 826 of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (August 17, 2006).

**ARTICLE I:
PURPOSE**

- 1.1** The purpose of the Deferred Compensation Plan is to provide a vehicle through which all employees of the State of Delaware may, on a voluntary basis, provide for additional retirement income security by deferring a portion of their current earnings.
- 1.2** By enrolling in this Plan, an employee agrees to defer a portion of his or her current earnings, thereby avoiding current income taxes on such earnings. Effective as of October 1, 1999, the State established the State of Delaware Deferred Compensation Plan Trust to hold and invest the Participant contributions and earnings thereon for the exclusive benefit of Participants and their beneficiaries.
- 1.3** Compensation deferred under this program must be viewed as something that will remain invested in the Plan until retirement; and it must be remembered that a withdrawal of funds – for any reason – will be subject to state and federal taxation.

**ARTICLE II:
DEFINITIONS**

As used herein:

- 2.1 **“Administrative Agent”** means such individuals or organizations as may be retained by the Council to maintain account records or to otherwise administer the Plan.
- 2.2 **“Anniversary Date”** means the annual reoccurrence of a Participant’s Effective Date.
- 2.3 **“Beneficiary”** means the person or persons designated as the Participant’s beneficiary pursuant to Section 3.4 or, in the absence of such a designation, the person or persons as determined under Section 3.5.
- 2.4 **“Code”** means the Internal Revenue Code of 1986, as amended. Reference to a specific section of the Code includes not only the section but any comparable section or sections of any future legislation that amends, supplements or supersedes the section.
- 2.5 **“Compensation”** means wages within the meaning of Code section 3401(a) and all other payments of compensation to an employee by the State for which the State is required to furnish the employee a written statement under Code sections 6041(d), 6051(a)(3) and 6052. Compensation shall be determined without regard to any rules under section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed; provided, however, that Compensation shall include any: (i) elective deferral as defined in Code section 402(g)(3), and (ii) any amount contributed or deferred by the State at the election of the employee, and not includible in the employee’s income by reason of Code section 125, 132(f) or 457.
- 2.6 **“Council”** means the Deferred Compensation Council of the State of Delaware, as established by Title 29, Delaware Code, Chapter 60A.
- 2.7 **“Custodian”** means any institution which may be retained by the Council to hold custody of and administer, where appropriate, assets of the program.
- 2.8 **“Effective Date”** for all employees who first become participants prior to December 31, 1978, shall be January 1, unless, prior to December 1, 1979, the participant elects the first day of any other month to be his or her effective date. The effective date of all employees who first became participants after December 31, 1978, shall be the first day of the month following the date on which the Employee filed the Participant Agreement in such form and manner as may be prescribed by the Administrator.
- 2.9 **“Elective Contributions”** means the amounts contributed to the Plan at the election of the Participant. The Participant’s election shall be filed with the Administrative Agent in such form or in such manner, as may be specified by the Administrator from time to time.
- 2.10 **“Employee”** means an individual who is employed by and performs services for the State of Delaware, including elected or appointed officials, and who receives Compensation wholly or in part directly from the State Treasurer or from the Treasury through an agency within the State that is wholly or in part supported by the State.

- 2.11 **“Employer”** means the State of Delaware, including all agencies, by whatever name known, that have working for them individuals who meet the definition of “Employee” above.
- 2.12 **“Enrollment”** means the procedure by which an Employee files an initial Participant Agreement electing to contribute to the Plan and becoming a participant in the Plan.
- 2.13 **“Includible Compensation”** means an Employee’s actual wages for services performed for the Employer for the year as reported in box 1 of form W-2, increased by any compensation reduction election under Sections 125, 132(f), 401(k), 403(b) or 457(b) of the Code (including an election to defer Compensation under this Plan), but subject to a maximum of \$200,000 (or such higher maximum as may apply under Section 401(a)(17) of the Code).
- 2.14 **“Investment Options”** means the investment options offered from time to time under the Plan.
- 2.15 **“Normal Retirement Age”** means the age designated by the Participant that falls within the range of ages beginning at the earlier of age 65 or the age at which the Participant has the right to retire and receive, under the State pension plan applicable to the Participant, immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and ending at age 70½.
- 2.16 **“Participant”** means an employee who is enrolled in the Deferred Compensation Plan.
- 2.17 **“Participant Account”** or **“Account”** means the account maintained by the Trustee for the benefit of the Participant reflecting all transactions which affect the valuation of such account including such items as Elective Contributions allocated to the account, earnings and/or losses, withdrawals, expenses deducted from the account, and all other legitimate charges.
- 2.18 **“Participant Agreement”** means the multi-purpose form, or forms, which may be hard copy or electronic, as provided or approved by the Administrator through which an employee voluntarily:
- (1) elects to contribute to the Plan by instructing the Employer to reduce the Compensation that would otherwise be paid to the Employee and to transfer such deferred Compensation to the Trustee to invest in the Investment Options specified by the Employee;
 - (2) prospectively changes such election, either as to amount of Compensation deferred or as to the Investment Options; and

- (3) requests distribution of benefits, including specification of the desired manner in which distributions to be made and the beneficiary designation for the distribution.

The initial Participant Agreement containing instructions with respect to the deferral of Compensation shall not be effective before the first day of the month in which the Compensation would otherwise be paid or made available in the absence of such Agreement. A Participant Agreement will remain in effect until it is revoked or revised by the Participant. The revised election will be effective prospectively in accordance with procedures established by the Administrator.

- 2.19** **“Plan”** means the State of Delaware Deferred Compensation Plan.
- 2.20** **“Plan Administrator”** or **“Administrator”** means the person, group or entity designated in accordance with the provisions of Article IX to administer and operate the Plan.
- 2.21** **“Program”** means the deferred compensation program as is adopted by the Council which includes the Plan.
- 2.22** **“Regulations”** means regulations promulgated under the Code pursuant to the authority of the Secretary of the Treasury.
- 2.23** **“Severance from Employment”** means the termination of the Employee’s employment with the Employer for any reason, including death, disability or retirement. Whether a Severance from Employment has occurred will be interpreted by the Administrator taking into account guidance issued in connection with Section 457 of the Code and the regulations promulgated thereunder.
- 2.24** **“State”** means the State of Delaware.
- 2.25** **“Trust”** means the trust fund established pursuant to the Plan and maintained in accordance with the terms of the Plan, as amended from time to time.
- 2.26** **“Trustee”** means Fidelity Management Trust Company or any successor trustee that may be appointed by the Plan Administrator.

- 2.27 “Unforeseeable Emergency”** means a severe financial hardship of the Participant resulting from (a) an illness or accident of the Participant, the Participant’s spouse, the Participant’s dependent (as defined in section 152(a) of the Code) or the Participant’s Beneficiary; (b) loss of the Participant’s property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner’s insurance, e.g., as a result of a natural disaster); (c) the need to pay for the funeral expenses of the Participant’s spouse, the Participant’s dependent (as defined in Section 152(a) of the Code) or the Participant’s Beneficiary or (d) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant.
- 2.28 “Valuation Date”** means each business day on which the New York Stock Exchange is open.

ARTICLE III:
ENROLLMENT AND PARTICIPATION

- 3.1 Eligibility.** All regular full- or part-time Employees who are otherwise eligible for the State of Delaware employee benefits plans are eligible to participate in the Plan. Individuals hired on a temporary basis (including, individuals classified as “casual/seasonal” employees) or as consultants shall not be eligible to participate in the Plan.
- 3.2 Enrollment.** An Employee may enroll in the Plan by filing a Participant Agreement with the Administrative Agent in such manner as may be prescribed by the Plan Administrator. The Participant’s elections as set forth in the Participant Agreement shall remain in effect until modified or revoked by the Participant in accordance with Section 3.3.
- 3.3 Modification or Revocation of Compensation Deferral Election.** A participant may:
- (A) discontinue deferral of compensation at any time by filing a revised Participant Agreement with the Administrative Agent in accordance with the procedures specified by the Plan Administrator. Such election to discontinue deferral of Compensation shall be effective in accordance with the procedures established by the Administrator. A Participant who has received a distribution on account of an Unforeseeable Emergency shall discontinue deferrals and may not make further deferrals until the expiration of six (6) months after the date of distribution on account of Unforeseeable Emergency, after which period such Participant may elect to defer Compensation again by filing a revised Participant Agreement with the Administrative Agent in accordance with the procedures referred to in the first sentence of this subsection.
 - (B) reduce or increase the amount of Compensation to be deferred, by filing a new Participant Agreement with the Administrative Agent in accordance with the procedures specified by the Plan Administrator reflecting any such change. The new Participant Agreement will be effective in accordance with the procedures established by the Administrator.
- 3.4 Designation of Beneficiary.** Each Participant from time to time may designate any person or persons (who may be named contingently or successively) to receive such benefits as may be payable under the Plan upon or after his or her death, and such designation may be changed from time to time by the Participant by filing a new designation. Each designation will revoke all prior designations by the same Participant, shall be in a form prescribed by the Administrator, and will be effective only when filed in writing with the Administrative Agent during the Participant's lifetime. If the Participant is a participant in the State of Delaware Match Plan (the “Match Plan”), a single beneficiary designation shall govern the distribution of benefits under this Plan and

the Match Plan. A Beneficiary that has an account in the Plan because of the death of a Participant, or a person maintaining an account with the Plan under the terms of a Domestic Relations Order issued pursuant to Section 11.5 herein, may also designate a Beneficiary under the provisions of this Section 3.4, unless the Domestic Relations Order specifically provides otherwise. An ex-spouse who becomes an “alternate payee” pursuant to a Domestic Relations Order shall no longer be treated as the Participant’s Beneficiary under the Plan, unless (i) the Participant designates the ex-spouse as a Beneficiary, and such designation is signed after the date on which the Domestic Relations Order became effective, or (ii) the Domestic Relations Order issued pursuant to Section 11.5 herein specifically provides otherwise,

3.5 Absence of Beneficiary Designation. In the absence of a valid beneficiary designation under this or the Match Plan, or if, at the time any benefit payment is due to a Beneficiary validly named by the Participant and said Beneficiary is not then living, the Administrator shall distribute any such benefit payment in accordance with the following order: (i) to the Participant’s surviving spouse, if any, or if there is none surviving, (ii) to the Participant’s estate. If a Beneficiary was receiving payments under the Plan, and the Beneficiary does not make a Beneficiary designation and dies before the account is fully distributed, any remaining value of the account shall be paid in accordance with the order established in the preceding sentence. In determining the existence or identity of anyone entitled to a benefit payment, the Administrator may rely conclusively upon information supplied by the Participant’s Personal Representative. In the event of a lack of adequate information having been supplied to the Administrator, or in the event that any question arises with respect to any such payment, then, notwithstanding the foregoing, the Administrator, in its sole discretion, may distribute such payment to the Participant’s estate without liability for any tax or other consequences which might flow therefrom.

3.6 Protection of Persons Who Serve in a Uniformed Service. A Participant whose employment is interrupted by “qualified military service” as defined in Section 414(u) of the Code or who is on a leave of absence for such “qualified military service,” shall continue participation hereunder upon reemployment from such “qualified military service.” If the Participant returns to employment during the time when his reemployment rights are protected by law, the Participant may elect to make additional annual deferrals (“Makeup Contributions”) upon resumption of employment with the State equal to the annual maximum deferral contribution as determined under Sections 4.1, 4.2 and 4.3 that the Participant could have elected during that period if the Participant’s employment with the State had continued (at the same level of Compensation) without the interruption or leave, reduced by the annual deferrals, if any, actually made for the Participant during the period of the interruption or leave. This right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave). Makeup contributions may only be made during this period and while the Participant is employed by the Employer.

ARTICLE IV:
CONTRIBUTIONS

4.1 Maximum Deferral Contribution. Except as permitted under Sections 4.2 and 4.3 of this Article IV, the annual amount that may be deferred by the Participant and contributed to the Plan (the “Basic Limitation”) may not exceed the lesser of:

(A) The applicable annual dollar amount specified in Section 457(e)(15) of the Code; specifically:

(1) \$11,000 for 2002;

(2) \$12,000 for 2003;

(3) \$13,000 for 2004;

(4) \$14,000 for 2005;

(5) \$15,000 for 2006 and thereafter, or such higher amount as may be permitted pursuant to any applicable cost-of-living adjustment under Section 415(d) of the Code; or

(B) 100% of the Participant’s Includible Compensation for the taxable year.

4.2 Age 50 Catch Up. A Participant who is (i) age 50 by the end of the year and (ii) is not eligible for the Special Limitation described in Section 4.3 below, may make an age 50 catch up contribution, provided such age 50 catch up contributions do not exceed the limit set forth in Section 414(v) of the Code for the taxable year; specifically,

(A) \$1,000 for 2002;

(B) \$2,000 for 2003;

(C) \$3,000 for 2004;

(D) \$4,000 for 2005;

(E) \$5,000 for 2006 and thereafter or such higher amount as may be permitted pursuant to any applicable cost-of-living adjustment under Section 415(d) of the Code.

4.3 Special Limitation (or Section 457 Catch Up). For one or more of the Participant’s last three taxable years ending before the Participant attains Normal Retirement Age, notwithstanding the limits set forth in Sections 4.1 and 4.2 above, the maximum amount that may be contributed shall be the lesser of:

- (A) Twice the dollar amount in effect under the Basic Limitation as set forth in Section 4.1 above; or
- (B) The underutilized limitation. For such purposes, the underutilized amount is the sum of:
 - (1) An amount equal to (i) the Basic Limitation set forth in Section 4.1 of the taxable year plus each calendar year beginning after December 31, 2001 during which the Participant was an Employee under the Plan reduced by (ii) the Participant's annual deferrals under the Plan during such years.
 - (2) An amount equal to such limitation as established under Section 457(b)(2) of the Code for each taxable years beginning after December 31, 1978 and before January 1, 2002 in which the Participant was eligible to participate less the amount of the Participant's annual deferrals to Pre-2002 Coordination Plans (as defined in Section 4.4 below) for such prior taxable year or years (disregarding any age 50 catch up deferrals). In determining the underutilized limitation for taxable years prior to 2002, the special rules set forth in Treas. Reg. § 1.457-4(c)(3)(iv) shall be applied.

4.4 Rules for Determining Applicable Limitation. For purposes of determining the applicable limitation as determined under Sections 4.1 through 4.3, the following rules shall apply:

- (A) **Participant Covered By More Than One Eligible Plan.** If the Participant is or has been a participant in one or more other eligible plans within the meaning of Section 457(b) of the Code, then this Plan and all such other plans shall be considered as one plan for purposes of applying the limitations set forth in Sections 4.1 through 4.3. For this purpose, the Administrator shall take into account any other such eligible plan maintained by the Employer and shall also take into account any other such eligible plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan.
- (B) **Pre-participation Years.** In applying Section 4.3, a year shall be taken into account only if (i) the Participant was eligible to participate in the Plan during all or a portion of the year and (ii) Compensation deferred, if any, under the Plan during the year was subject to the Basic Limitation set forth in Section 4.1 or any other plan ceiling required by Section 457(b) of the Code.
- (C) **Pre-2002 Coordination Years.** For purposes of Section 4.3(B)(2), "Pre-2002 Coordination Plans" means any employer contribution, salary reduction or elective contribution under any other eligible Code Section 457(b) plan, or a

salary reduction or elective contribution under any Code Section 401(k) qualified cash or deferred arrangement, Code Section 402(h)(1)(B) simplified employee pension (SARSEP), Code Section 403(b) annuity contract, and Code Section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in Section 501(c)(18) of the Code, including plans, arrangements or accounts maintained by the Employer or any employer for whom the Participant performed services. However, the contributions for any calendar year are only taken into account for purposes of Section 4.3(B)(2) to the extent that the total of such contributions does not exceed the aggregate limit referred to in Section 457(b)(2) of the Code for that year.

4.5 Distribution of Excess Deferrals. If the Administrator determines that the amount deferred by a Participant is in excess of the limitations set forth in Sections 4.1 through 4.3 above, the Administrator shall distribute such excess amount, with allocable net income, to the Participant as soon as administratively practicable. For purposes of determining whether there has been an excess deferral, all plans in which the Employee participates by virtue of his employment relationship with a single employer shall be treated as a single plan.

4.6 Rollover Contributions. An Employee may pay over or have transferred to the Trust on his behalf any amount which constitutes an eligible rollover distribution as defined by Section 402(c)(4) of the Code or a rollover contribution described in Section 408(d)(3) of the Code consisting solely of a rollover from a trust qualified under Code section 401(a) and (k) or a plan described in Sections 403(b) or 457(b) of the Code, including any after-tax contributions. Such rollover, shall constitute a part of the Employee's Account (although accounted for separately), and shall be fully vested at all times. The Plan shall establish and maintain a separate account for each rollover contribution.

For purposes of determining the Basic or Special Limitation, Rollover contributions shall not be included.

ARTICLE V: ALLOCATION OF CONTRIBUTIONS

5.1 Individual Accounts. The Administrator shall establish and maintain an Account for each Participant with sub-accounts to reflect Elective Contributions and Rollover Contributions as set forth below. The Administrator shall establish and maintain such other accounts and records as it decides in its discretion to be reasonably required or appropriate in order to discharge its duties under the Plan. The Administrator shall notify the Trustee of all Accounts established and maintained under the Plan. Deferrals by the Participant shall be transferred to the Trustee for the Participant's Account within a

period that is not longer than is reasonable for the proper administration of the Participant's Account.

- (A) **Elective Contribution Account.** There shall be established and maintained a separate Elective Contribution Account in the name of each Participant, which shall be fully vested at all times, and to which shall be credited or charged: (i) Elective Contributions made to the Participant's account; (ii) withdrawals, and (iii) any income, or expenses, gains or losses (whether or not realized, based on fair market value of invested assets) attributable or allocable thereto.
- (B) **Rollover Account.** There shall be established and maintained a separate Rollover Account in the name of each Participant, which shall be fully vested at all times, and to which shall be credited or charged: (i) Rollover Contributions made to his or her account; (ii) withdrawals, and (iii) any income, or expenses, gains or losses (whether or not realized, based on fair market value of invested assets) attributable or allocable thereto.

- 5.2 **Adjustment of Accounts.** As of each Valuation Date, each Account will be adjusted to reflect the fair market value of the assets allocated to the Account. In so doing: (i) each Account balance will be increased by the amount of contributions, income and gain allocable to such Account since the prior Valuation Date; and (ii) each Account balance will be decreased by the amount of distributions from the Account and expenses and losses allocable to the Account since the prior Valuation Date. Any expenses relating to a specific Account or Accounts, including without limitation, commissions or sales charges with respect to an investment in which the Account participates, may be charged solely to the particular Account or Accounts.

ARTICLE VI: **INVESTMENT OF CONTRIBUTIONS**

- 6.1 **Manner of Investment.** - All contributions made to the Accounts of Participants shall be held for investment by the Trustee.
- 6.2 **Participant Direction of Investments.** Participants shall direct the investment of their Accounts in accordance with rules and procedures established by the Administrator into one or more of the investment options selected by the Administrator and set forth in the Trust Agreement between the State and the Trustee, as such may be amended from time to time. The Trustee shall have no duty to inquire into the investment decisions of a Participant or to advise the Participant regarding the purchase, retention, or sale of assets credited to his Account.
- (A) **Initial Investment Election.** The Participant shall provide investment instructions in such form and manner as may be prescribed by the Administrator, selecting the investments in which amounts credited to his or her Account shall be

invested. It is intended that all Participants (and Beneficiaries of deceased Participants) shall direct the investment of their Accounts in accordance with this Section 6.2.

- (B) **Change in Investment Election.** A Participant shall be permitted to change his or her investment elections both as to amounts credited to the Participant's Account and future contributions. Any change in investment elections shall be made in accordance with rules and procedures established by the Administrator.
- (C) **Default Election.** In the event that the Administrator possesses at any time instructions as to the investment of less than all of the Participant's Account, the Participant (or Beneficiary of a deceased Participant) shall be deemed to have designated that the non-directed portion of the Account shall be invested in such fund or funds as may be designated the default investment option by the Administrator.
- (D) **Replacement of Investment Option.** If the Administrator is removing a particular investment option that had been available for selection by Participants, it may automatically transfer to a replacement option having similar investment characteristics the account balances of Participants that have been sent notice that the option is being removed from the Plan, and have failed to take action to make a new investment election for their Account.

6.3 Account Transfers. Participants may transfer part or all of their existing Account balances from one investment option to another in accordance with rules and procedures established by the Administrator.

6.4 Liability for Participant-directed Investments. Notwithstanding any other provision of the Plan and to the extent permitted by applicable law, neither the Council, nor the Administrator, nor any individual member, nor the State, nor any other officer or employee of the State who may be a fiduciary with respect to the Plan shall have any liability, fiduciary or otherwise, for any loss arising from or as a result of any investment designation by the Participant pursuant to Section 6.2, or by reason of the inability to make a change in designation on any particular date, and all such persons are specifically absolved of any statutory, judicial, legal or other responsibility with respect thereto (including any responsibility to determine the appropriateness of any individual Participant's investment designations).

ARTICLE VII: DISTRIBUTION OF BENEFITS

7.1 Distribution Events. Distribution of the Participant's Elective Contribution Account from the Plan shall be made no earlier than the occurrence of one of the following events: (i) the Participant's Severance from Employment; (ii) the first day of the calendar year in

which the Participant attains age 70-1/2; or (iii) Unforeseeable Emergency as determined by the Administrator.

- (A) **Severance from Employment.** Following a Severance from Employment, the Participant (or his or her Beneficiary, in the event of the Participant's death), may elect to take a distribution of his Account by submitting his or her request in such form and manner as prescribed by the Administrator.
- (B) **Attainment of Age 70-1/2.** Notwithstanding the fact that the Participant has not had a Severance from Employment, after the first day of the calendar year in which the Participant attains age 70-1/2, the Participant may elect to take a distribution of part or all of his or her Account by submitting a request in such form and manner as prescribed by the Administrator.
- (C) **Unforeseeable Emergency.** A Participant may request a distribution due to an Unforeseeable Emergency by submitting a request to the Administrator, accompanied by evidence to demonstrate that the circumstances being experienced qualify as an Unforeseeable Emergency, including whether the Unforeseeable Emergency could be relieved. No distribution shall be permitted if the Unforeseeable Emergency could be relieved (i) through reimbursement or compensation from insurance or otherwise; (ii) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or (iii) by cessation of deferrals under the Plan. The Administrator shall have the authority to require such evidence as it deems necessary to determine if a distribution is permitted. If a request for a distribution due to an Unforeseeable Emergency is approved, the distribution shall be limited to an amount sufficient to meet the Unforeseeable Emergency (which may include the amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

7.2 Method of Payment. Subject to the minimum distribution requirements of Section 7.4 below, the Participant (or his or her Beneficiary) may elect, in such form and manner as may be prescribed by the Administrator, to have his or her Account distributed in any of the following methods:

- (A) **Lump Sum.** A distribution of the entire Account of the Participant in a single lump sum. If the Participant (or Beneficiary) elects a lump sum form of payment, the Participant (or Beneficiary) may elect to make a direct rollover transfer to an eligible retirement plan pursuant to Section 7.5 below.
- (B) **Installment Payments.** The Participant (or Beneficiary) may elect to take payment in installments.

7.3 Distribution on the Death of the Participant. Upon the death of a Participant while in the active employ of the State, or after Severance from Employment but before

commencement of his or her benefits, or before the Participant receives all of the amount to which he or she is entitled pursuant to the option under which benefits are being paid, the entire (or remaining) value of the Account shall be paid to the Participant's designated Beneficiary or, if there is no designated Beneficiary, in accordance with the provisions of Sections 3.4 or 3.5, as applicable.

7.4 Minimum Distribution Requirements. The minimum distribution requirements as set forth below are intended and shall be interpreted to comply with Section 401(a)(9) of the Code and the applicable regulations.

(A) Notwithstanding anything to the contrary contained elsewhere in this Plan:

(1) A Participant's benefits under the Plan will:

- (a)** be distributed to him or her not later than the Required Distribution Date (as defined in subsection (A)(3) below), or
- (b)** be distributed commencing not later than the Required Distribution Date in accordance with applicable Regulations over a period not extending beyond the life expectancy of the Participant and his Beneficiary.

(2) (a) If the Participant dies after distribution has commenced pursuant to subsection (A)(1)(b) but before his or her entire interest in the Plan has been distributed to him or her, then the remaining portion of that interest will be distributed at least as rapidly as under the method of distribution being used under subsection (A)(1)(b) at the date of his or her death.

(b) If the Participant dies before distribution has commenced pursuant to subsection (A)(1)(b), then, except as provided in subsections (A)(2)(c) and (A)(2)(d), his or her entire interest in the Plan will be distributed by the end of the calendar year which contains the fifth (5th) anniversary of his or her death.

(c) Notwithstanding the provisions of subsection (A)(2)(b), if the Participant dies before distribution has commenced pursuant to subsection (A)(2)(b) and if any portion of his or her interest in the Plan is payable (i) to or for the benefit of a Beneficiary, (ii) in accordance with the applicable Regulations over a period not extending beyond the life expectancy of the Beneficiary, and (iii) beginning not later than the end of the calendar year immediately following the calendar year of the Participant's death or such later date as permitted by applicable Regulations, then the portion referred to in this subsection (A)(2)(c) shall be treated as distributed on the date on which such distribution begins.

- (d) Notwithstanding the provisions of subsections (A)(2)(b) and (A)(2)(c), if the Beneficiary referred to in subsection (A)(2)(c) is the surviving spouse of the Participant, then
 - (I) the date on which the distributions are required to begin under subsection (A)(2)(c)(iii) of this section shall not be earlier than the date on which the Participant would have attained the age of 70-1/2, and
 - (II) if the surviving spouse dies before the distributions to that spouse begin, then this subsection (A)(2)(d) shall be applied as if the surviving spouse were the Participant.
- (3) For purposes of this section, the Required Distribution Date means April 1 of the calendar year following the later of :
 - (a) the calendar year in which the Participant attains age 70-1/2; and
 - (b) the calendar year in which the Participant retires or otherwise has a Severance from Employment with the Employer and all related employers unless the Participant is a 5% owner (as defined in Section 416 of the Code) of the Employer with respect to the Plan Year ending in the calendar year in which the Participant attains age 70-1/2, in which case this clause (2) shall not apply.
- (4) For purposes of this subsection, the life expectancies of the Participant and his surviving spouse may be redetermined, but not more frequently than annually, in accordance with the Regulations. This subsection (A)(4) shall not apply in the case of a life annuity.
- (5) A Participant may not elect a form of distribution under the Plan providing payments to a Beneficiary who is other than his surviving spouse unless the actuarial value of the payments expected to be paid to the Participant is more than 50% of the actuarial value of the total payments expected to be paid under such form of distribution.

7.5 Direct Rollovers. Notwithstanding any other provision of the Plan to the contrary, a Participant or Beneficiary ("Distributee") may elect, at the time and in the manner prescribed by the Administrator, to have any portion or all of an "eligible rollover distribution" as defined by the Section 402(c)(4) of the Code paid directly to an "eligible retirement plan" as defined by the Section 402(c)(8)(B) of the Code specified by the Distributee in a direct rollover; provided, however, that this provision shall not apply if the total "eligible rollover distribution" that the Participant is reasonably expected to receive for the calendar year is less than \$200 and that a Distributee may not elect a direct rollover with respect to a portion of an "eligible rollover distribution" if such portion

totals less than \$500. The Administrator shall notify the Distributee in writing of the payment options available under the Plan, the Distributee's right to make a Direct Rollover, the Distributee's right to consider the payment options for at least 30 days and the federal income tax consequences relating to distributions from the Plan.

- 7.6 Transfer of Assets to Purchase Service Credits in State Pension Plan.** Pursuant to such rules as may be established by the Administrator, a Participant may elect, at such time as he or she is otherwise entitled to a distribution (other than on account of Unforeseeable Emergency) to transfer part or all of the Account to purchase service credit under a defined benefit pension plan maintained by the State that permits the acceptance of such plan-to-plan transfers.
- 7.7 Incapacity.** In the event that the Administrator determines, on the basis of a medical report or other evidence satisfactory to the Administrator, that the Participant or Beneficiary is incapable of handling his affairs by reason of minority, illness, infirmity or other incapacity, the Administrator may direct the Trustee to disburse payments to a person or institution designated by a court or other legal authority receive such payments. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

ARTICLE VIII: TRUST FUND

- 8.1 Investment of Funds.** All contributions under the Plan shall be paid to the Trustee of the Plan and deposited in the Trust. Such contributions, all investments made therewith and proceeds thereof, and all earnings and profits thereon, less the authorized disbursements therefrom, shall constitute the Trust, which Trust, and any agreement under which it is maintained, shall in all respects constitute a part of the Plan. The State of Delaware, acting through the Council, reserves the right to select, and from time to time to change, the Trustee. The Administrator reserves the right to amend the Trust, or to create separate or additional trusts and by express appointment designate additional trustees of such entities, or to create and administer master or group trusts that hold assets of this and other tax qualified plans, or other plans permitted to participate in group trusts under the Code.
- 8.2 Prohibition Against Diversion of Funds.** It shall be impossible by operation of the Plan or Trust, by natural termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Trust, or any funds contributed thereto, to inure to the benefit of the State or otherwise be used for or diverted to purposes other than providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan. Recovery by the State of an amount contributed to the Plan in error shall not be treated as a diversion of funds.

**ARTICLE IX:
ADMINISTRATION**

9.1 Administrative Authority. Except as otherwise specifically provided herein, the Council shall have the sole responsibility for and the sole control of the operation and administration of the Plan, and shall have the power and authority to take all action and to make all decisions and interpretations which may be necessary or appropriate in order to administer and operate the Plan, including, without limiting the generality of the foregoing, the power, duty and responsibility to:

- (A) Resolve and determine all disputes or questions arising under the Plan, including the power to determine the rights of Employees, Participants and Beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions.
- (B) Adopt such rules of procedure as in its opinion may be necessary for the proper and efficient administration of the Plan and are consistent with the Plan.
- (C) Implement the Plan in accordance with such rules.
- (D) Decide upon the eligibility of any Employee as a Participant, and the crediting and distribution of a Participant's interest in the Trust, which are to be made only upon the basis of instructions from the Participant pursuant to the terms of the Plan.

9.2 Administration. The Plan shall be operated and administered on behalf of the Council by the Office of the State Treasurer. In the absence of a specific designation to the contrary by the Council, and subject to the power to delegate pursuant to this Section, the State Treasurer shall be the Administrator for purposes of this Plan. The Administrator shall be governed by the following:

- (A) The Administrator shall have full authority to act for the Council before all persons in any matter directly pertaining to the Plan, including the exercise of any power or discretion otherwise granted to the Council pursuant to the terms of the Plan, other than the power to amend or terminate the Plan, to determine State contributions, to exercise authority to direct the investment of the Trust, to affect the employer-employee relationship between the State and any Employee, and to retain and/or discharge any separately appointed Trustees, all of which powers are reserved to the Council unless expressly granted to the Administrator under this Plan.
- (B) The Administrator may appoint any persons or firms, or otherwise act to secure specialized advice or assistance, as he or she deems necessary or desirable in connection with the administration and operation of the Plan; the Administrator

shall be entitled to rely conclusively upon, and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such firms or persons. The Administrator shall have the power and authority to delegate from time to time by written instrument all or any part of his or her duties, powers or responsibilities. Any action of such person in the exercise of such delegated duties, powers or responsibilities shall have the same force and effect for all purposes hereunder as if such action had been taken by the Administrator. Further, the Administrator may authorize one or more persons to execute any certificate or document on behalf of the Administrator, in which event any person notified by the Administrator of such authorization shall be entitled to accept and conclusively rely upon any such certificate or document executed by such person as representing action by the Administrator until such third person shall have been notified of the revocation of such authority. The Administrator shall not be liable for any act or omission of any person to whom the Administrator's duties, powers or responsibilities have been delegated, nor shall any person to whom any duties, powers or responsibilities have been delegated have any liabilities with respect to any duties, powers or responsibilities not delegated to him.

- (C) All representatives of the Administrator, its staff, or other persons to whom they delegate responsibility, shall use ordinary care and diligence in the performance of their duties pertaining to the Plan, but, except to the extent required by law, no such individual shall incur any liability: (i) by virtue of any contract, agreement, bond or other instrument made or executed by him or on his behalf as in his official capacity with respect to the Plan, (ii) for any act or failure to act, or any mistake or judgment made, in his official capacity with respect to the Plan, unless resulting from gross negligence or willful misconduct, or (iii) for the neglect, omission or wrongdoing of any other person involved with the Plan. Such persons shall be entitled to the indemnification provisions of Delaware law for the effects and consequences of their acts, omissions and conduct in their official capacity with respect to the Plan, except to the extent that such effects and consequences shall result from their own willful misconduct or gross negligence. If any matter arises as to which an individual is entitled to indemnity hereunder, the indemnitee shall give the Administrator or the State, as the case may be, prompt written notice thereof. The Administrator, at its own expense, shall then take charge of the disposition of the asserted liability, including compromise or the conduct of litigation. The indemnitee may, at his or her own expense, retain his or her own counsel and share in the conduct of any such litigation, but the failure to do so shall not adversely affect his or her right to indemnity.
- (D) The Plan may purchase, as an expense of the Plan, liability insurance for the Plan and/or for the Administrator to cover liability or losses occurring by reason of an act or omission of the Administrator or any fiduciary. Any fiduciary may purchase, from and for his or her own account, insurance to protect against liability in the event of a breach of fiduciary duty.

- (E) Nothing in the Plan shall be construed so as to prevent any person from (i) receiving any benefit to which he or she may be entitled as a Participant or Beneficiary, or: (ii) receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly incurred in the performance of his duties under the Plan (except that no person so serving who receives compensation as an Employee shall receive compensation from the Plan, except for reimbursement of expenses properly incurred).

- 9.3 Uniformity of Discretionary Acts.** Whenever in the administration or operation of the Plan discretionary actions by the Employer, the Council or the Administrator are required or permitted, such action shall be consistently and uniformly applied to all persons similarly situated.
- 9.4 Payment of Administration Expenses.** Expenses incurred in the administration and operation of the Plan shall be paid by the Trustees out of the Trust to the extent not paid by the State. In allocating such expenses among the accounts within the Trust, the Administrator may calculate same as a percentage of a Participant's account value in or at the end of any period or year (including assessment as part of any daily valuation system), or as a sum in dollars assessed upon the status and/or value of a Participant's Account as of the closing date for statements of such account. In allocating such expenses the Administrator need not assess the same charge or type of charge against every account, but may establish different charges based on the size of the account, the investment option the Participant has selected, or the type and number of transactions with respect to an individual Participant. The Administrator, in its discretion, may adopt methods under which Participants can elect to pay directly (rather than through reduction of account values) their proportionate share of Plan Administration expense.
- 9.5 Statements of Account.** - Statements of each Participant's account shall be furnished to each Participant at least annually, within 90 days after the end of each calendar year, and at such more frequent intervals as determined by the Administrator.

ARTICLE X: **AMENDMENT AND TERMINATION**

- 10.1 Right to Amend or Terminate.** The Council shall have the right to amend or terminate the Plan, at any time, and with respect to any provisions thereof, and all parties thereto or claiming any interest thereunder shall be bound thereby. Notwithstanding the foregoing, no amendment can be made that results in the forfeiture of a vested benefit or modifies or limits the requirement that Plan assets be held for the exclusive benefit of Participants and their Beneficiaries and defraying the reasonable expenses of the Plan.
- 10.2 Amendment to Conform to Federal Law.** Notwithstanding anything to the contrary in Section 10.1, the Administrator shall have the right to amend the Plan and Trust may be amended at any time, retroactively if required, if found necessary in order to conform to

or take advantage of liberalizations in the provisions and requirements of the Internal Revenue Code, or any similar act or any amendments thereto or regulations promulgated thereunder; or to facilitate the administration of the Plan; provided, no such amendment shall be considered prejudicial to any interest of a Participant or Beneficiary hereunder.

- 10.3 Application of EGTRRA Sunset Provision.** All amendments to this Plan which provide benefits incorporated as a result of the enactment of the Economic Growth and Tax Relief Reconciliation Act of 2001 (“EGTRRA”), shall automatically sunset after 2010 (or a later date if the provisions of EGTRRA are extended) unless the EGTRRA changes are made permanent.

ARTICLE XI **MISCELLANEOUS**

- 11.1 Limitations on Liability of Employer.** Neither the establishment of the Plan or Trust nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the State (or any person connected therewith), the Trustees or any insurance or investment company, except as provided by law or by any Plan provision. Neither the State, the Council nor the Administrator in any way guarantees the Trust from loss or depreciation, nor guarantee the payment of any money, which may be or become due to any person from the Trust. Any person having a right or claim under the Plan shall look solely to the Trust assets, and in no event shall the State, the Council or the Administrator (or any person connected therewith) be liable to any person on account of any claim arising by reason of the provisions of the Plan or of any instrument or instruments implementing its provisions, or for the failure of any Participant, Beneficiary or other person to be entitled to any particular tax consequences with respect to the Plan, the Trust or any contribution thereto or distribution therefrom. Neither the State, the Council, nor the Administrator shall be liable to any person for failure on its part to make contributions, nor shall any action lie to compel such contributions. Neither the State, the Council nor the Administrator (or any person connected therewith) shall have any liability to any person by reason of the failure of the Plan to satisfy the requirements of Section 457(b) of the Code, regardless of whether or not such failure is due to any act or omission (willful, negligent or otherwise) of the Council or Administrator (or any person connected therewith).
- 11.2 Construction.** The Plan is intended to comply with all requirements of an eligible deferred compensation plan under Section 457(b) of the Code and, if any provision of the Plan is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being in compliance with such requirements. In case any provision of the Plan shall be held to be illegal or void, such illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein. For all

purposes of the Plan, where the context admits, words in the masculine gender shall include the feminine and neuter genders, the singular shall include the plural, and the plural shall include the singular. Headings of Article and Sections are inserted only for convenience of reference and are not to be considered in the construction of the Plan. Except to the extent preempted by federal law, the laws of Delaware shall govern, control and determine all questions arising with respect to the Plan and the interpretation and validity of its respective provisions. If the indefinite continuance of the Plan would be in violation of the law, then the Plan shall continue for the maximum period permitted by law and shall then terminate, whereupon distribution of the Trust assets shall be made to Participants and/or their Beneficiaries. Participation under the Plan will not give any Participant the right to be retained in the service of the State nor any right or claim to any benefit under the Plan unless such right or claim has specifically accrued hereunder.

- 11.3 USERRA** - Notwithstanding any provision of the Plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.
- 11.4 Anti-Alienation**. Except as provided in Section 11.5 below, no portion of any account or benefit, or interest of a Participant or Beneficiary in the Trust Fund, may be sold, transferred, assigned, pledged, charged or used as collateral; and no such account or interest shall be subject to attachment or seizure by a creditor, including the State of Delaware acting as a creditor; provided, however the Plan may recognize the Internal Revenue Service's authority to levy a Participant's account for federal taxes.
- 11.5 Domestic Relations Orders**. Notwithstanding Section 11.4 above, if a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child or other dependent of a Participant is made pursuant to the domestic relations law of any state ("Domestic Relations Order") and such Domestic Relations Order is submitted to the Plan on or after January 1, 2006, then the amount of the Participant's Account shall be paid in the manner and to the person or persons so directed in the Domestic Relations Order, so long as such Domestic Relations Order complies with all requirements of applicable law and provisions of the Plan. Notwithstanding the foregoing, the Administrator is entitled to make payment pursuant to a valid Domestic Relations Order which directs payment prior to the time the participant is otherwise entitled to a distribution under the terms of the Plan. The Administrator shall establish reasonable procedures for determining, in its discretion, the status and validity of any such decree or order and for effectuating distribution pursuant to the Domestic Relations Order. Unless otherwise stated in the Domestic Relations Order, an ex-spouse who becomes an "alternate payee" shall no longer be treated as the Participant's Beneficiary under the Plan, unless the Participant designates the ex-spouse as a Beneficiary, and such designation is signed after the date on which the Domestic Relations Order became effective.
- 11.6 Elections, Disclosures by Telephone and Electronic Means Permitted**. Any direction, notice or other communication provided to the Employer, the Administrator, the Trustee,

or the Participant which is required to be in writing under the provisions of the Plan may be provided by electronic means or by telephone if permitted by the Administrator and by applicable law or regulations.

In witness whereof, the undersigned has executed this amended and restated Plan on behalf of the Delaware Deferred Compensation Council this 23rd day of May, 2006.

Jack Markell
Treasurer
State of Delaware